

# Essay001

*by Sharon Sharon*

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## **PART A**

### **1. Four Elements of Negligence**

Negligence is the broadest type of tort which means lack of general care, measured against the standard imposed by law<sup>1</sup>. The defendant if is short of the required standards will be held liable for the damage caused on the plaintiff.

Negligence is characterized by four elements, which are: Duty of care, Breach of duty of care, causation and damages caused or incurred<sup>2</sup>.

#### **A. Duty of care**

Duty of care refers to responsibility or legal obligation befalling a person requiring of him to act in a certain way towards others as required by the law. Where such a person fails to adhere to the set standard, they are held responsible in accordance with the law. A doctor is supposed to accord a patient safe, high and reasonable care while in hospital.

#### **B. Breach of duty of care**

Where a party is legally bound to act in a certain way but fails to, they automatically breach the duty of care or obligations placed on them where it was reasonably foreseeable that such a breach or injury would occur. Where a doctor gives a patient a wrong prescription of milk and in turn it affects the patient, the doctor will be in breach of a duty of care.

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<sup>1</sup> [https://www.academia.edu/27901635/Tort\\_Law\\_Negligence](https://www.academia.edu/27901635/Tort_Law_Negligence)

<sup>2</sup> Kaur, D. S., & Turner, C. (2020). *Unlocking torts*.

### C. Causation

Majorly referred to as “but for”, causation refers to the connection of the actions of a defendant to the injury caused, such that, were it not for the actions of the defendant, such an injury would not have occurred. The plaintiff must prove this connection. The patient should demonstrate that the aftermath of such negligence is wholly attributable to the doctor.

### D. Damages caused or incurred

Where the above elements are proved, the plaintiff must ultimately prove that damage was caused out of the actions of the defendant. This is because, at times, an injury might occur with no damages (**Injuria Sine damnum**) and also damages might occur without any injury or infringement of rights (**Damnum Sine Injuria**).

## 2. Failure to file articles of incorporation

Articles of incorporation refer to the necessary formal documents and files filed with the Secretary of State or company registrar where the company chooses to operate to legally create a corporation, organization or company. Articles of incorporation entail some of the following important features: <sup>3</sup> name of the corporation, type of corporate structure, registered agent, number of authorized shares, names and signatures of the owners of the corporation.

It is after filling the articles of incorporation that the corporation can apply for tax IDs, obtain business licenses, sign contracts, and conduct business. Hence, Bob & Shirley’s restaurant cannot be regarded as a corporation because they have not been formally recognized.

### **3. Mirror image rule**

Mirror image rule states that where a contractual offer is made, an interested party should wholly accept the terms contained therein or the offer will lapse and hence will not be binding<sup>3</sup>. This means that the exact terms offered are and should be the exact terms accepted to create a binding contract since both parties are in agreement of what they should implement or abide by. If the offeree modifies the offer, the original terms have been set aside and a counter offer made hence mirror image rule will not apply and parties may choose to reinitiate the process again. The mirror image rule therefore can be said to incorporate the elements of a valid contract which include: offer, acceptance, unconditional acceptance among others.

This rule applies to some of the following scenarios: merchant trade where the offer contains its own terms and that the offeree should accept them, if the offeree intends to object, they should do so within a reasonable time and where introduction of additional or different terms entirely vitiates the offer.

It also applies to offering of services like painting and renovation of a house where the quotation offered is final and modifications will vitiate the offer.

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<sup>3</sup> [https://www.law.cornell.edu/wex/mirror\\_image\\_rule](https://www.law.cornell.edu/wex/mirror_image_rule)

## **PART B**

### **1. AGENCY RELATIONSHIP**

Bud is the principal in this relationship while Brody is the agent acting on behalf of Bud expressly or impliedly and hence since Brody has the authority sanctioned by Bud, Bud will be held liable for all actions of Brody as long as he authorized them.

### **2. Compensation of candy's store**

Candy is entitled to at least \$200,000 since the fair value of her store as at the time when the federal government expressed interest stands at that amount.

### **3. NEGOTIABLE INSTRUMENTS**

This situation gives rise to a negotiable promissory note since patty, in writing promised to pay \$2,500 with 6% interest 30 days after the writings were exchanged.

### **4. Bankruptcy**

I would recommend chapter 7 bankruptcy since it is more quicker and <sup>4</sup>many filers can keep all or most of their property. Filers don't pay creditors through a three- to five-year period.

### **5. 3<sup>rd</sup> party rights**

Lisa possess creditor rights and some of them include <sup>1</sup>to put a lien on a debtor's property, to effect a seizure and forced sale of the debtor's property, to effect a garnishment of the debtor's wages. She possesses these rights since as one of their right and a duty to the debtor, the deserve payment and hence the creditor should be left with a wide range of available options to maximize on debt collection.

## 6. Oral and written security for a loan

Contracts are generally enforceable but certain formalities are required for them to be legally enforceable. One of the formalities is that a contract should be in writing and hence the contract agreement between Lloyd and Matilda will be enforceable against the oral contract between Lloyd and Collin.

## 7. Common carrier liability

Common carrier <sup>2</sup> can be sued for injuries for either failing to adhere to a particular regulation or failing to exercise the care and diligence that would be expected of a reasonably careful operator <sup>5</sup> since carriers are required to exercise the highest degree of care and diligence in the safety of their passengers and cargo<sup>4</sup>

## 8. Jurisdiction of federal and state court in regard to automobile accidents

The matter should be filed before the state court as it doesn't exceed \$75 000. Where the amount is controversy above \$75,000, federal jurisdictions will apply.

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<sup>4</sup> <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2287&context=articles> (The Liability of the Common Carrier as Determined by the Recent Decisions of the United States Supreme Court)

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